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1 All I can tell you is that I had provided everything that  
 2 was in all of our files so --  
 3 Q By when, as best you can recall it, had issues  
 4 with respect to the provisions of the Vantage/SHC  
 5 agreement been essentially resolved?  
 6 A Yes, they were eventually resolved.  
 7 Q No. By when had they been essentially  
 8 resolved?  
 9 A As between May 18 and June -- whatever it is  
 10 when it was signed. I could not say exactly when.  
 11 Q Let's mark as the next exhibit a memorandum  
 12 from Mr. Fleisher to Mr. Nobles, Mr. VerMaas and  
 13 Mr. DeVassie dated June 3, 1999. Do you remember  
 14 Exhibit 7, sir?  
 15 A Yes, I recognize that.  
 16 Q Is that a memorandum that you prepared for the  
 17 addressees on or about the date it bears?  
 18 A Yes, it is.  
 19 Q Okay. Were Msrs. Nobels, DeVassie and VerMaas  
 20 all members of SHC?  
 21 A That's correct.  
 22 Q Does it refresh your recollection that by  
 23 June 3 any issues with respect to the agreement had been  
 24 resolved?  
 25 A Yes.

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1 Q Let's mark as the next exhibit a memorandum  
 2 dated May 25, 1999, from Mr. Miller to Mr. Fleisher. Do  
 3 you recognize Exhibit 8, sir?  
 4 A Yes, it has my handwriting on it.  
 5 Q Did you receive that on or in due course of the  
 6 mails after the date it bears?  
 7 A Pardon?  
 8 Q Did you receive that document from Mr. Miller  
 9 on or in due course of the mails after the date it bears?  
 10 A I would -- yes, I would presume we received it  
 11 on or about that date that it says, May 25 of 1999, and I  
 12 answered on May 27, 1999.  
 13 Q Okay. Does Exhibit 8 address the subject of  
 14 payment modalities at all?  
 15 A Okay. Let me take a moment to review that if I  
 16 could.  
 17 Q By all means.  
 18 A No, that was not addressed. These pages do not  
 19 address any payment issues.  
 20 Q Is it consistent with your best recollection  
 21 that by May 25 any issues with respect to payment  
 22 modalities had been resolved?  
 23 A I believe so because it was May 18 -- May 18  
 24 notes indicate the problem with the Cooperative Mailing  
 25 Rule and the excess payments, promissory notes and so

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1 forth, and this one's dated May 25. And I -- well, I  
 2 said "George, this language is fine. Also I confirm  
 3 there's no problem with donors who first require" -- this  
 4 deals with 5.2 and 5.3. Although it looks like  
 5 everything is resolved by then, I couldn't be 100 percent  
 6 sure because we might have only been dealing with 5.3.  
 7 That was the only page that was attached.  
 8 And I said -- he says in this, "here's the new  
 9 language that Carolyn proposed for 5.3," so forth and so  
 10 on. And I say, "This language is fine and I confirm  
 11 there is no problem" -- and so forth. So this might very  
 12 well have been just speaking to any provisions with 5.3.  
 13 So I could not say with certainty that by that date the  
 14 provisions regarding payment were 100 percent worked out.  
 15 Q But that's consistent with your best memory, is  
 16 it not?  
 17 A That they were worked out by that date?  
 18 MR. GRIFFIN: Objection.  
 19 A No. On thinking on it again, I could not say  
 20 for certainty that they had been resolved by that date.  
 21 BY MR. JOHNSON:  
 22 Q Let me put it another way. Do you have any  
 23 memory to the contrary?  
 24 A No.  
 25 Q Do you have any memory, any specific

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1 affirmative memory, of any discussion -- having had any  
 2 discussion with Mr. Miller of any aspects of the payment  
 3 provisions after that conference call that you had with  
 4 him and perhaps with Mr. Lyon around May 20?  
 5 A I could not recall. I would not be able to say  
 6 one way or the other as to what happened six years ago on  
 7 May 20.  
 8 MR. JOHNSON: Thank you, sir. That's it.  
 9 MR. GRIFFIN: You done?  
 10 MR. JOHNSON: Yeah.  
 11 MR. GRIFFIN: Could we put our stipulation on  
 12 the record as far as the documents produced?  
 13 MR. JOHNSON: Why don't we go off the record  
 14 for a moment and you and I discuss what the  
 15 stipulation is and then when we've got common ground  
 16 we'll put it on the record.  
 17 (Discussion off the record.)  
 18 MR. JOHNSON: All right. We've agreed,  
 19 Mr. Griffin and I, in order to obviate the need for  
 20 examination on that topic, that the correspondence  
 21 files produced by Shriners in response to  
 22 Mr. Griffin's subpoena and limited to correspondence  
 23 appearing in those files are true and accurate  
 24 copies of correspondence appearing in the  
 25 correspondence files of Shriners and that such

20

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1 documents are kept by Shriners in the regular course  
2 of its business.

3 EXAMINATION

4 BY MR. GRIFFIN:

5 Q Can you recall the first date that you spoke to  
6 George Miller regarding the contract for the Shriners and  
7 Vantage?

8 A Not the specific date. It would have been  
9 after our board meetings in April of 1999. I did not  
10 speak with him before those board meetings.

11 Q I would like to mark as the next exhibit –  
12 we're up to 7.

13 THE COURT REPORTER: No, 9.

14 MR. JOHNSON: Describe it for the record.

15 BY MR. GRIFFIN:

16 Q Can you tell me what this document is?

17 A It's a letter from me to Peter Levett,  
18 Assistant US Attorney at the U.S. Department of Justice.

19 Q Bates Number SHC04236 to SHC04276, correct?

20 A Yes, that's correct.

21 MR. JOHNSON: Does the letter have a date?

22 BY MR. GRIFFIN:

23 Q The letter's dated December 17, 2000, correct?

24 A Correct.

25 Q Attached to this letter are there minutes of

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1 the board meeting you just referred to where the Vantage  
2 contract was discussed for the first time by the board?

3 A What page is that? Is that SHC04241?

4 Q I believe so.

5 A That's correct.

6 Q Right.

7 A Yes. Those would be the minutes of the boards'  
8 meeting.

9 Q So as of that date it was the board's  
10 understanding that Vantage had represented that this  
11 contract would be at no cost to the Shriners outside of  
12 the program receipts; is that correct?

13 MR. JOHNSON: Objection to the form.

14 A From my presence at the board meetings, my  
15 understanding is that it was represented to the boards  
16 that that statement is correct.

17 BY MR. GRIFFIN:

18 Q Do you know who made that representation on  
19 behalf of Vantage?

20 A There was no Vantage representative at the  
21 board meetings during that time.

22 Q Prior to the meeting, who had made these  
23 representations to the Shriners?

24 MR. JOHNSON: Objection to the form.

25 A I don't know.

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1 BY MR. GRIFFIN:

2 Q But, to your knowledge, prior to Mr. Miller's  
3 involvement negotiating the contract, Vantage had made a  
4 representation regarding the payment provisions and  
5 liability of the Shriners; is that correct?

6 MR. JOHNSON: Objection to the form. I also  
7 point out to you that he just testified that it  
8 wasn't to his knowledge, and nobody made such a  
9 representation to him and that it's all third hand.

10 BY MR. GRIFFIN:

11 Q The board minutes reflect the fact that Vantage  
12 had made representations to the Shriners regarding the  
13 Shriners' liability under the contract, correct?

14 MR. JOHNSON: Objection to the form.

15 A That's correct.

16 BY MR. GRIFFIN:

17 Q And that occurred before Mr. Miller's  
18 involvement with the negotiations, correct?

19 A That's correct.

20 Q Would you agree that any negotiations going  
21 forward between the Shriners and Vantage from that date  
22 were limited by the initial representations made by  
23 Vantage regarding liability for payment?

24 MR. JOHNSON: Objection to the form.

25 A They were limited by the presentation at the

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1 board meetings as to how the finances of the program  
2 would operate without financial risk to Shriners  
3 Hospitals for Children.

4 BY MR. GRIFFIN:

5 Q So the provisions in the contract going forward  
6 limited by those representation reflected in the board  
7 minutes; is that correct?

8 MR. JOHNSON: Objection to the form.

9 A Up through shortly before the final agreement  
10 where a compromise was reached concerning if the Shriners  
11 just wanted to walk away from the contract.

12 BY MR. GRIFFIN:

13 Q You testified earlier that you recalled a  
14 conference here in Tampa with Larry Lyon prior to the  
15 signing of the Shriners/Vantage agreement. Do you recall  
16 that testimony?

17 A Yes.

18 Q And during that meeting did Mr. Lyon make any  
19 representations regarding the Shriners' liability under  
20 the agreement?

21 MR. JOHNSON: Objection to form.

22 A I do not recall specifically. I can't recall  
23 specifically one way or the other because I can't recall  
24 whether that particular conference that we had dealt with  
25 that particular topic because I can't remember whether

21

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1 that topic had arisen yet.  
 2 **BY MR. GRIFFIN:**  
 3 Q I would like to mark as Exhibit Number 10 an  
 4 April 13, 1999, memorandum from you to Ralph Semb. It's  
 5 Bates-numbered SHC00370 through SHC00374.  
 6 MR. JOHNSON: You want to mark it again? It's  
 7 Exhibit 1.  
 8 MR. GRIFFIN: It's got handwritten notes the  
 9 original doesn't have.  
 10 **BY MR. GRIFFIN:**  
 11 Q Can you just take a look at this, please, and  
 12 tell me if you recognize it?  
 13 A Yes. That's the memorandum that I had given to  
 14 Mr. Semb prior to the board meetings after he had given  
 15 to me the contract that I presented to him from Vantage  
 16 to review prior to the board meetings.  
 17 Q Do you recognize the handwritten notes on this  
 18 document?  
 19 A Yes, those are mine.  
 20 Q On Page 370, the first page --  
 21 A Yes.  
 22 Q -- underneath the fifth bullet --  
 23 A The fifth bullet?  
 24 Q Yes. It says "cost, fees and expenses are not  
 25 clearly laid out and should be under the agreement as

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1 department had to review the agreement before it would be  
 2 approved by the president of the corporation.  
 3 Q Like to mark as Exhibit 11 a memorandum from  
 4 you to Louis Mulnar, Theodore Persuans, Jacob Wood, Chip  
 5 Jones, dated April 27, 1999, Bates-numbered SHC047233  
 6 through SHC047239. Do you recognize this document?  
 7 A Yes.  
 8 Q This is a memorandum you prepared?  
 9 A Yes.  
 10 Q If you look at the second-to-last sentence  
 11 going forward it says "I will provide each of you a copy  
 12 of the proposed agreement before transmitting it for  
 13 approval to the chairman of the board of directors,  
 14 chairman of the board of trustees and chairman of the  
 15 endowment, wills and gifts committee as directed by the  
 16 boards."  
 17 Is it correct that the approval process for the  
 18 agreement included you running the contract by the four  
 19 individuals identified on this memorandum as well as the  
 20 three chairmen?  
 21 A No.  
 22 Q Okay. What was the --  
 23 A The approval process was the chairman of the  
 24 board of directors, chairman of the board of trustees and  
 25 chairman of the endowment and wills committee and

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1 first prepared. SHC could owe Vantage more than the  
 2 gross amount of donations taken in. Vantage would be  
 3 insulated from any program risk." Did I read that  
 4 correctly?  
 5 A Yes, you did.  
 6 Q There's a handwritten note by that says "says  
 7 no." Is that correct?  
 8 A Right.  
 9 Q Who was saying no to that provision?  
 10 A The "says no" would have been during the board  
 11 meetings. I took this -- I took a copy of this  
 12 memorandum with me to the board meetings and at the board  
 13 meetings while the boards were going on, I believe --  
 14 well, I can't testify 100 percent certainty but I was  
 15 taking notes concerning what the boards had determined to  
 16 do or what was represented to them on this piece of  
 17 paper.  
 18 Q And this is the April 1999 board meeting?  
 19 A Yes.  
 20 Q As a result of the board meeting was there any  
 21 procedure put in place for approving the final form of  
 22 the agreement?  
 23 A Yes. There was a committee comprised of  
 24 several authorities at Shriners Hospitals for Children  
 25 that had to review the agreement and also legal

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1 copies -- I was giving these to those people that was  
 2 the -- let's see. Two employees of the corporation, the  
 3 general counsel and an outside auditor. They were not  
 4 officers of the organization. I was providing to them  
 5 courtesy copies for their review.  
 6 Q So this is for their information?  
 7 A Pardon?  
 8 Q This was for their information?  
 9 A Yes.  
 10 Q But ultimately in order for it to be approved  
 11 the chairman of the board of directors, chairman of the  
 12 board of trustees and the chairman of the endowment,  
 13 wills and gift committees all had to approve the  
 14 contracts; is that correct?  
 15 A That's correct.  
 16 Q Can you identify for me who those individuals  
 17 were at this time?  
 18 A At that time the chairman of the board of  
 19 directors was Mr. Semb, Ralph Semb. The chairman of the  
 20 board of trustees was Mr. John VerMaas, V-E-R-M-A-A-S,  
 21 and the chairman of the endowment, wills and gifts  
 22 committee was a Mr. Terrie -- that's I-E -- DeVassie.  
 23 Capital D, little E, capital V-A-S-S-I-E.  
 24 Q So it's fair to say that no individual  
 25 themselves, including you, could approve final form of

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1 the agreement?

2 **A That's correct.**

3 Q If you look further in this Exhibit Number 11

4 there is yet another copy of your April 13, 1999,

5 memorandum to Ralph Semb which begins on SHC04725. Do

6 you see that?

7 **A Yes.**

8 Q And attached is the initial draft of the

9 agreement that you were provided by Mr. Semb; is that

10 correct?

11 **A It would appear to be. It's the same one that**

12 **we were looking at previously in my other testimony, so**

13 **it would appear to be, yes.**

14 Q Do you have any knowledge as to whether

15 Mr. Miller was involved in preparing this initial draft?

16 **A None whatsoever.**

17 Q You had not had any contact with Mr. Miller

18 regarding this draft as of April 27, 1999; is that

19 correct?

20 **A I can't remember if I contacted him between**

21 **April 13 and April 27. I know that prior -- at the time**

22 **I had received the agreement that's attached to the April**

23 **13, 1999, memorandum I had -- I didn't even know who**

24 **Mr. Miller was.**

25 Q If you look forward to SHC04737, third-to-last

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1 page in this exhibit.

2 **A Yes.**

3 Q It's Paragraph 12.1, termination without cause,

4 correct?

5 **A Yes.**

6 Q Within that paragraph there are provisions

7 concerning rental of the Shriners mailing list and

8 additional mailings for a 36-month period; is that

9 correct?

10 MR. JOHNSON: Objection to the form.

11 **A Yes. Yes.**

12 **BY MR. GRIFFIN:**

13 Q So those provisions were in the original form

14 of the agreement you received, correct?

15 MR. JOHNSON: Objection to the form.

16 **A The provisions that are shown there are in the**

17 **original form of the agreement to the best of my**

18 **recollection.**

19 **BY MR. GRIFFIN:**

20 Q Okay. I would like to look at next part of

21 Exhibit 6 here which was Exhibit 13B to the deposition

22 of --

23 MR. GRIFFIN: This is Mr. Miller, correct?

24 MR. JOHNSON: Mmm-hmm.

25 **BY MR. GRIFFIN:**

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1 Q If you will look at -- well, let's identify it.

2 It's Draft 5 of the agreement to provide fundraising

3 consulting and management services, correct?

4 **A Yeah. SHC03322, that's where it starts.**

5 Q Yes. Look at Page SHC03336.

6 **A Okay. Yeah.**

7 Q Is this your handwriting notes on here?

8 **A Yes, it is.**

9 Q If you look on the bottom left-hand corner

10 there's a comment that begins with Bracewell. Could you

11 read that for me?

12 **A Something terminate -- yeah. "Bracewell, SHC**

13 **terminate. We chose to pay bills or let them use mailing**

14 **list." Yeah. This was cut -- there is part of that cut**

15 **off on there. If I had the original it would say,**

16 **"Bracewell-SHC terminate where we choose to pay bills or**

17 **let them use mail list."**

18 Q Do these notes document your prior testimony

19 concerning your conversations with Mr. Bracewell?

20 MR. JOHNSON: Objection to the form.

21 **A Helps to refresh my recollection that I had a**

22 **conversation with him concerning this.**

23 **BY MR. GRIFFIN:**

24 Q How was your recollection refreshed by this

25 note?

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1 **A Well, the notes said Mr. Bracewell told me that**

2 **regarding that particular paragraph there if Shriners**

3 **Hospitals for Children chose to terminate, we'd pay the**

4 **bills at that point or let them use the mail list to make**

5 **it up.**

6 Q So it was Mr. Bracewell's determination that

7 the Shriners opted for that payment method?

8 MR. JOHNSON: Objection to the form.

9 **A Mr. Bracewell was the corporate officer that I**

10 **was working most closely with during negotiations, and I**

11 **discussed it with him and he's the one that gave me that**

12 **advice.**

13 **BY MR. GRIFFIN:**

14 Q Did you also make the edits to these headings

15 here, termination without cause?

16 **A All of the handwriting on that page is mine.**

17 Q Does that document reflect your recollection in

18 any other way concerning conversations with Mr. Bracewell

19 or any member of the Shriners regarding the options for

20 satisfying liability under the contract?

21 **A Well, from my notes there it says Bracewell**

22 **terminates, so forth and so on at the corner. To the**

23 **best of my recollection, these changes resulted from**

24 **discussions with him or discussions with him and others.**

25 **I couldn't tell you for sure where exactly all of these**

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1 changes came from, except I was acting under the  
2 directions of Mr. Bracewell regarding termination without  
3 cause, in essence.

4 Q The next I would like to look at another part  
5 of Exhibit 6 which was Exhibit 13F from Mr. Miller's  
6 deposition. This was your May 12, 1999, memorandum to  
7 Gene Bracewell?

8 A Yes, that's my memorandum.

9 Q If you look at Page SHC00312, Paragraph 13.1,  
10 termination without cause.

11 A 00312, you say?

12 Q 00312.

13 A 0213?

14 Q 12.

15 A 12. Okay. All right.

16 Q Paragraph 13.1 states that any outstanding  
17 billing statements shall become due and payable to  
18 Vantage with 60 days of such notice, correct?

19 MR. JOHNSON: Object to the form.

20 A Yes.

21 BY MR. GRIFFIN:

22 Q This draft of Paragraph 13.1 does not contain  
23 any mention of the 36-month mailings or list rental that  
24 were contained in the original agreement; is that  
25 correct?

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1 the final version of Paragraph 13. There were  
2 modifications of what would happen and who owed what when  
3 the agreement terminated between this particular version  
4 that we're talking about now and the final version.

5 BY MR. GRIFFIN:

6 Q Under this version would you agree that the  
7 Shriners were liable for paying any outstanding balance?

8 MR. JOHNSON: Objection to the form.

9 A 13.1, the Shriners would have to pay any  
10 outstanding balance due and payable. 13. - If - okay.  
11 Not under this version.

12 BY MR. GRIFFIN:

13 Q Sorry? Didn't hear you.

14 A Okay. Would you repeat the question as to  
15 13.3, please?

16 Q Under 13.3 are the Shriners liable for paying  
17 outstanding liabilities?

18 MR. JOHNSON: Objection to the form.

19 A It looks like we would be liable for that.

20 BY MR. GRIFFIN:

21 Q Is it fair to say that all of these drafts  
22 contained in Exhibit Number 6 you can't tell for certain  
23 what date order these come in?

24 A That's correct.

25 Q And you can't tell for certain whose edits are

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1 MR. JOHNSON: Objection to the form.

2 A No, it does not.

3 BY MR. GRIFFIN:

4 Q And Paragraph 13.3 is titled "Event of  
5 Default," correct?

6 A Correct.

7 Q And that also concluded all outstanding billing  
8 statements shall be immediately due and payable to  
9 Vantage and if directed by Shriners Vantage shall furnish  
10 all preapproved mailing; is that correct?

11 MR. JOHNSON: Objection to form.

12 A Yes.

13 BY MR. GRIFFIN:

14 Q This does not include any of the 36-month  
15 mailing -- recovery mailing provisions that were included  
16 in the prior versions of the correct; is that correct?

17 MR. JOHNSON: Objection to the form.

18 A That's correct.

19 BY MR. GRIFFIN:

20 Q And based on the final version of the agreement  
21 these provisions which impose liability on Shriners were  
22 not included, correct?

23 MR. JOHNSON: Objection to the form.

24 A I can say that the wording in the entire  
25 Paragraph 13 is not the same wording as it ended up in

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1 reflected on all these drafts; is that correct?

2 A Only the ones that bear my handwriting.

3 MR. GRIFFIN: Where is the final agreement?

4 MR. JOHNSON: It's 2, I think.

5 BY MR. GRIFFIN:

6 Q Take a look at Paragraph 13.2. You have had  
7 the opportunity to review that today; is that correct?

8 A Correct.

9 Q Would you have advised the Shriners to enter  
10 into an agreement with Vantage absent the provisions in  
11 Paragraph 13.2 as written?

12 MR. JOHNSON: Objection to the form.

13 A No, I would not have.

14 BY MR. GRIFFIN:

15 Q If you can look at Paragraph 13.1 also. You  
16 have had the chance to review that today, too, correct?

17 A Correct.

18 Q Would you have had advised Shriners to enter  
19 into this agreement with Vantage absent the inclusion of  
20 Paragraph 13.1 as written?

21 MR. JOHNSON: Objection to the form.

22 A No, I would not have advised them.

23 BY MR. GRIFFIN:

24 Q Like to mark the next exhibit which is a May  
25 20, 1999, memorandum from you to John Nobles and others

24



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1 which is Bates-numbered SHC04771 to SHC04772. Do you  
 2 recognize this document?  
 3 **A Yes, I do.**  
 4 **Q** Can you describe what it is?  
 5 **A** It's a memorandum that I sent to the chairman  
 6 of the board of directors, the chairman of the board of  
 7 trustees and the chairman of the endowment, wills and  
 8 gift committee describing the substance of the agreement  
 9 that would be executed with Vantage.  
 10 **Q** Does this memorandum memorialize your  
 11 conversations with your counsel, William Lehrfeld, that  
 12 you referred to earlier?  
 13 **MR. JOHNSON:** Objection to the form.  
 14 **A Yes, it does.**  
 15 **BY MR. GRIFFIN:**  
 16 **Q** Paragraph Number 1. The final sentence says,  
 17 "The final draft of the agreement has been prepared by me  
 18 and is being faxed today to Vantage attorney for their  
 19 final review." Do you see that statement? Is that  
 20 correct?  
 21 **A Yes.**  
 22 **Q** Paragraph 2A states in part SHC is liable for  
 23 all postage cost no matter what. This is required by law  
 24 to obtain lowest nonprofit rates for program. Does that  
 25 reflect the advice given to you by Mr. Lehrfeld,

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1 **A Yes, it does, I believe so.**  
 2 **Q** Going down to Paragraph 2B. Third sentence  
 3 states "Vantage's attorney maintains that SHC must be  
 4 fully liable for not only postage costs but all other  
 5 costs of the program in order for nonprofit mailing  
 6 rights to apply." Is that a correct reading of that?  
 7 **A Yes, it is.**  
 8 **Q** Is that a statement made by Mr. Miller?  
 9 **A Yes, by Mr. Miller.**  
 10 **Q** And then it goes on to say, "According to the  
 11 experts contacted by Mr. William Lehrfeld, SHC only has  
 12 to be fully liable for postage expended in order to use  
 13 the nonprofit rates. According to these experts, there  
 14 is no reason legally why Vantage could not itself absorb  
 15 any deficiency other than postage between donations and  
 16 costs at a time during the operation of the program."  
 17 Does that accurately reflect the advice given to you by  
 18 Mr. Lehrfeld?  
 19 **MR. JOHNSON:** Objection to the form.  
 20 **A Yes, it does.**  
 21 **MR. JOHNSON:** I'm objecting to the form. I try  
 22 to give you some advance clue when I'm going to do  
 23 that just by holding up my hand so you'll give me a  
 24 chance to make my objection. Thanks, Mr. Fleisher.  
 25 **A Yes, it does.**

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1 **BY MR. GRIFFIN:**  
 2 **Q** It's true that you never had an attorney-client  
 3 relationship with Mr. Miller, correct?  
 4 **A No, never had one.**  
 5 **Q** Paragraph D in this is a reference to Vantage  
 6 contends SHC must sign a separate interest-bearing  
 7 promissory note for postal costs advanced to it by  
 8 nonprofit rates via outgoing mail. Is that correct?  
 9 **A Yes, it is.**  
 10 **Q** Is that statement attributable to Mr. Miller?  
 11 **A Yes, that would have been attributable to**  
 12 **Mr. Miller.**  
 13 **Q** So you had discussions with Mr. Miller  
 14 regarding the execution of a promissory note?  
 15 **A Yes, I did.**  
 16 **Q** And the Shriners determined not to proceed in  
 17 that fashion?  
 18 **A That's correct.**  
 19 **Q** If you can look at the agreement again, which  
 20 is Exhibit Number 2.  
 21 **A What page?**  
 22 **Q** Page 5.  
 23 **A Page 5 of the agreement?**  
 24 **Q** Yes. Look at Paragraph Number 2. Just take a  
 25 look at that.

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1 **A Can we go off the record for just a second?**  
 2 **MR. GRIFFIN:** Sure.  
 3 (Discussion off the record.)  
 4 **BY MR. GRIFFIN:**  
 5 **Q** I just previously asked you to look at  
 6 Paragraph 2 of the agreement on Page 5.  
 7 **A Mmm-hmm.**  
 8 **Q** That agreement -- that paragraph concluded  
 9 Shriners assumed complete and full responsibility for  
 10 payment of all postage incurred as a result of the  
 11 operation of this agreement and Vantage has no obligation  
 12 whatsoever for payment of postage; is that correct?  
 13 **A That's correct.**  
 14 **Q** So under this agreement you agreed that the  
 15 Shriners had to pay any postage that was incurred as a  
 16 result of mailings made under the agreement?  
 17 **MR. JOHNSON:** Objection to the form.  
 18 **A That's correct.**  
 19 **BY MR. GRIFFIN:**  
 20 **Q** At some point in time you learned that Vantage  
 21 was involved in a civil action brought by the United  
 22 States Government concerning its fundraising contracts?  
 23 **MR. JOHNSON:** Objection to the form. I don't  
 24 want to be hypertechnical with you, Mr. Griffin, but  
 25 that's not quite correct.

25

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1 A Yes.

2 BY MR. GRIFFIN:

3 Q Did Vantage ever communicate to you their  
4 belief that the Shriners were liable to pay the postal  
5 deficiencies that were being sought in that underlying  
6 action brought by the government?

7 A Yes, at one point.

8 Q How was that communicated to you?

9 A By -- during the contract -- during the term of  
10 the contract at the latter stages of the trial there was  
11 an invoice that we received from Vantage at the full  
12 postage rate, not at the lower nonprofit rate. And  
13 myself and I believe Bill Fossett contacted Matt somebody  
14 or other, one of the folks at Vantage, and told them that  
15 that was incorrect. We were supposed to be paying at the  
16 lower rate.

17 And at that point the folks at Vantage that we  
18 spoke to really didn't have any reason as to why the full  
19 rate was being charged. Excess of \$100,000 difference.  
20 So at that point I surmised that -- at that point I  
21 surmised that Vantage was protecting itself in the  
22 event -- and I seem to recall -- I can't remember exactly  
23 the series of letters back and forth between myself and  
24 Vantage's counsel or the people at Vantage concerning why  
25 they made that increase.

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1 I told them I didn't think there was any reason  
2 for that increase, and there might have been some mention  
3 that Vantage made regarding that suit. I can't recall  
4 specifically. If it's anywhere, it's in the  
5 correspondence.

6 Q In your opinion was Vantage authorized to mail  
7 at the regular bulk rates under the agreement?

8 MR. JOHNSON: Objection to the form.

9 A The regular one as opposed to the lower one?

10 BY MR. GRIFFIN:

11 Q Correct.

12 A No, they were not authorized to mail at the  
13 regular one.

14 Q Would you have ever advised the Shriners to  
15 enter into this agreement with Vantage if mailings were  
16 to be made at the regular bulk rate as opposed to the  
17 nonprofit standard rate?

18 MR. JOHNSON: Objection to the form.

19 A No, I would not have.

20 BY MR. GRIFFIN:

21 Q Just want to mark this as the next exhibit. If  
22 you could identify this document for me, please.

23 THE DEPONENT: I need to confer with you about  
24 that one. Can we step outside off the record for a  
25 second?

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1 (Mr. Fleisher's deposition was suspended at  
2 12:45 p.m. and resumed at 3:30 p.m.)

3 A Would you repeat the question, please?

4 BY MR. GRIFFIN:

5 Q I think we left off and we were looking at the  
6 indemnity agreement, correct? Do you recognize that  
7 agreement?

8 A Yes, I do.

9 Q Were you involved in the negotiation of this  
10 agreement?

11 A Yes, I was.

12 Q Can you tell me the background of what led to  
13 this agreement?

14 MR. JOHNSON: Objection to the form.

15 A Background of this is I had learned -- I think  
16 it was earlier than this --

17 MR. CANTER: Can I interrupt one second? Do  
18 you want to put this under seal, this part of the  
19 testimony, Larry?

20 MR. JOHNSON: Why would I put it under seal?

21 MR. CANTER: Because it has a -- this is your  
22 client. It's up to you. It has provision of  
23 confidentiality your client insisted upon. If you  
24 want to put this under seal, I won't object to it  
25 obviously. I don't think Matt will either. It's up

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1 to you.

2 MR. JOHNSON: It would probably be a good idea.  
3 I appreciate the suggestion.

4 MR. CANTER: Note on the record this part of  
5 the testimony will be under seal then by agreement  
6 of the parties.

7 BY MR. GRIFFIN:

8 Q You can continue in your answer.

9 A Yeah. There was sometime before that that I

10 had learned that the United States Government had brought  
11 an action against Vantage for whatever counts that they  
12 had in that particular case that's recited in there. And  
13 at that point I became concerned that Vantage may attempt  
14 to sue over Shriners Hospitals for Children for any  
15 excess -- for any excess postage they had to pay, damages  
16 or whatever in that case.

17 And there was a concern because there were a  
18 number of other institutions who had been named  
19 third-party defendants by Vantage, some of whom are  
20 Masonic institutions, as is Shriners. So there were a  
21 number of things going on at the time, and when I became  
22 aware that I felt that Shriners Hospitals for Children  
23 needed protection from Vantage in the event that Vantage  
24 sustained any loss arising out of that lawsuit.

25 Q Was it your opinion that Paragraph 2 of the

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1 contract created exposure for postal deficiencies?  
 2 MR. JOHNSON: Objection to the form.  
 3 A No, I didn't believe that created any -- I  
 4 didn't believe anything in the entire contract created  
 5 liability for postage deficiencies.  
 6 BY MR. GRIFFIN:  
 7 Q Under Paragraph 2 of the Shriners -- the  
 8 Shriners are liable for all postage paid for mailings  
 9 under the agreement, correct?  
 10 A That's correct.  
 11 Q What was the consideration that the Shriners  
 12 would give them for this agreement?  
 13 A It was review of further programs that were  
 14 going to be proposed by Vantage that the hospitals were  
 15 not obligated to previously review or consider. In  
 16 essence, in exchange for this, Vantage would be given the  
 17 opportunity to pitch further programs to the  
 18 businesspeople at Shriners.  
 19 Q I'll mark as the next exhibit a July 1, 2002,  
 20 letter to you from Seth Pearlman, Bates stamp NSG0172 to  
 21 NSG173. Do you recognize Exhibit 14?  
 22 A I haven't seen it yet. Nobody's given it to  
 23 me. Oh, yeah. That's right. Yes, I saw that. That's  
 24 one of the things that precipitated this because the  
 25 letter was sent by Seth Pearlman to James Fleisher. And

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1 A Pardon?  
 2 Q With whom did you negotiate the indemnity  
 3 agreement?  
 4 A Mr. Pearlman.  
 5 Q Was Mr. Johnson involved in that negotiation at  
 6 all?  
 7 A Larry?  
 8 Q I'm referring to Laurence Johnson here.  
 9 A Not to my knowledge, no.  
 10 Q Mark as the next exhibit an affidavit of  
 11 Willard Fossett, Jr. Have you seen this document before?  
 12 A Yes.  
 13 Q Can you tell me who Mr. Fossett is?  
 14 A Willard Fossett is the controller of Shriners  
 15 Hospitals for Children.  
 16 Q And attached to this affidavit there is an  
 17 Exhibit A, Vantage direct mail program summary. Do you  
 18 see that?  
 19 A Yes, I do.  
 20 Q To your knowledge, is that an accurate  
 21 reflection of the financial results of the agreement  
 22 through September 30, 2004?  
 23 A It was --  
 24 MR. JOHNSON: Object to the form.  
 25 A It was represented by Mr. Fossett, who is the

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1 if you look at the bottom of it, the last paragraph says  
 2 "the governor believes that as the holder of the  
 3 nonprofit mailing permit the Grand Lodge is jointly and  
 4 severally liable for Vantage." The Grand Lodge was one  
 5 of the Masonic organizations.  
 6 It's not officially connected with Shriners and  
 7 it was named as a third-party defendant, I believe, by  
 8 Vantage in the government suit. When I saw this, this  
 9 was preceded -- this agreement, I believe -- yes. That's  
 10 what really gave me concern is when we got a letter like  
 11 that.  
 12 Q So you understood although he was referring to  
 13 the Grand Lodge he meant the Shriners Hospitals for  
 14 Children?  
 15 A I don't know what he meant. All I know is he  
 16 sent a letter to me supposedly, although he got the name  
 17 wrong and the address right, and it looked like to me it  
 18 was a form letter that was shotgunned out to any number  
 19 of third-party defendants. And at that point, whatever  
 20 it was, I got pretty nervous about the possibility of  
 21 Shriners Hospitals for Children being exposed to any  
 22 damages coming out of that suit, and that's when  
 23 subsequently the indemnity agreement was negotiated.  
 24 Q With whom did you negotiate the indemnity  
 25 agreement?

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1 controller who calculated that, that it was a correct  
 2 calculation of the total amount that's consistent with  
 3 reports that I had been made aware of all along during  
 4 the program, but I didn't count the money.  
 5 BY MR. GRIFFIN:  
 6 Q Exhibit A, what's indicated as far as net  
 7 program donations?  
 8 MR. JOHNSON: Objection to the form.  
 9 A Did you ask a question?  
 10 BY MR. GRIFFIN:  
 11 Q Yes. I said Exhibit A, what does it show as  
 12 far as net program donations under the program?  
 13 A Well, \$2,831,695.  
 14 Q That's the net program proceeds to the Shriners  
 15 Hospitals for Children?  
 16 A That's correct.  
 17 Q And, to your knowledge, that's an accurate  
 18 number?  
 19 A To my knowledge, yes.  
 20 Q And total net program donations were  
 21 \$46,220,167, right?  
 22 MR. JOHNSON: Objection to the form.  
 23 A To my knowledge, that's correct. That's why I  
 24 asked Bill Fossett to put this together.  
 25 BY MR. GRIFFIN:

27



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1 Q And payments to Vantage, it's indicated as  
 2 \$36,043,436, correct?  
 3 MR. JOHNSON: Objection to the form.  
 4 A Yes.  
 5 BY MR. GRIFFIN:  
 6 Q And there is a line here that indicates Vantage  
 7 settlement, \$7,254,293, correct?  
 8 MR. JOHNSON: Objection to the form.  
 9 A That's correct.  
 10 BY MR. GRIFFIN:  
 11 Q So total payments to Vantage were over 43  
 12 million dollars, correct?  
 13 MR. JOHNSON: Objection to the form.  
 14 A It would appear, yes.  
 15 BY MR. GRIFFIN:  
 16 Q What does the Vantage settlement refer to?  
 17 A When the Vantage contract was terminating it  
 18 was, I think, over a four-year term there was some –  
 19 there were some issues as to what Shriners Hospitals for  
 20 Children had to pay in connection with the termination of  
 21 that contract, and a settlement was reached with Vantage  
 22 concerning what Shriners Hospitals for Children was still  
 23 liable to pay under the contract. And that was the  
 24 amount upon which we agreed and was ratified by our board  
 25 of directors, seven million.

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1 Q So at the end of the contract period there was  
 2 a shortfall of donations; is that correct?  
 3 MR. JOHNSON: Objection to the form.  
 4 A No. In my opinion, everybody else's opinion,  
 5 it just covered the whole thing by 2.8 million. The  
 6 gross donations covered the expenses by 2.8 million.  
 7 That's what we made out of the net.  
 8 BY MR. GRIFFIN:  
 9 Q So the seven million, that just reflects the  
 10 outstanding balances that were paid to Vantage at the  
 11 end?  
 12 MR. JOHNSON: Objection to the form.  
 13 A Those were the outstanding invoices that  
 14 Vantage had submitted to us less and except one invoice  
 15 which included postage at the full bulk mailing rate, not  
 16 the lower bulk – charitable bulk mailing rate.  
 17 There was some discussion as to whether or not  
 18 Shriners Hospitals was liable for that amount. And I  
 19 believe we were not liable for that increased postage,  
 20 and basically if you back that out, the 7.2 million was  
 21 the remainder of Vantage's invoices.  
 22 BY MR. GRIFFIN:  
 23 Q Vantage never conducted any additional mailings  
 24 under the contract as set forth in either 13.1 or 13.2,  
 25 correct?

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1 A Not subsequent to the end of the term of the  
 2 contract. Not after final mailing.  
 3 Q So essentially after final mailing the Shriners  
 4 agreed to pay what the outstanding balances were; is that  
 5 correct?  
 6 A Yes, essentially.  
 7 Q Was Vantage's position that at the end of the  
 8 contract period that Shriners were liable for payment of  
 9 those invoices?  
 10 MR. JOHNSON: Objection to the form.  
 11 A I was told by representatives of Vantage that  
 12 that was their opinion.  
 13 BY MR. GRIFFIN:  
 14 Q I'll mark this as the next exhibit. I have  
 15 marked a November 24, 2003, fax to Vantage Direct  
 16 Marketing Services, John Kenney, Jr., from Pearlman &  
 17 Pearlman. And attached thereto is a November 21, 2003,  
 18 letter to the Shriners Hospitals legal department.  
 19 That's Bates Numbers Vantage 491 to Vantage 4920.  
 20 A Mmm-hmm.  
 21 Q Do you recall receiving this letter?  
 22 A Yes, I did.  
 23 Q Am I correct this sets forth Vantage's position  
 24 that they would not settle for less than the full amount  
 25 due at the end of the agreement?

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1 MR. JOHNSON: Objection to the form.  
 2 A Let me read it, please. Yes, that's a correct  
 3 statement you just made.  
 4 BY MR. GRIFFIN:  
 5 Q So were you negotiating with Seth Pearlman  
 6 regarding the final payment under the contract? Is that  
 7 correct?  
 8 A Initially it was Seth Pearlman, and then also  
 9 the fellow who is – was at that time the – who recently  
 10 had become the general counsel of Vantage and then  
 11 subsequently the – with Mr. Johnson.  
 12 Q Did Vantage ever indicate that they had planned  
 13 to initiate legal proceedings to enforce payment of the  
 14 outstanding invoices?  
 15 MR. JOHNSON: Objection to the form.  
 16 A I don't recall them saying flat-out to me in a  
 17 letter, "we're going to sue you if you don't pay the rest  
 18 of those invoices." They may have, but I don't recall  
 19 that because if – no, I don't recall that specifically.  
 20 BY MR. GRIFFIN:  
 21 Q I'll mark this as the next exhibit. I have  
 22 marked some notes dated 12/2/03 in the upper right-hand  
 23 corner. Bates Number SHC04061. Do you recognize those  
 24 notes?  
 25 A Yes. Most of them are mine, and the phone

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1 number there is from my secretary.

2 Q And do those notes memorialize a conversation  
3 you had with Laurence Johnson?

4 A The conversation was with Mr. Johnson and John  
5 Kenney, he was their general counsel, and myself. It  
6 says "Fax a conclusion, share with client, rejected,  
7 denied, changed mind." I don't know what fax they are  
8 talking about. And then it says here "LJ said he only  
9 recommended it" -- whoever it is, I don't remember -- "if  
10 SHC agreed to pay interest and secured amount owed."

11 And then also it says "LJ said he had been  
12 instructed to file suit today if things couldn't be  
13 worked out; i.e., unless we agreed to pay all invoices  
14 immediately."

15 Q Does this refresh your recollection as to  
16 whether Vantage had threatened litigation to enforce  
17 payment under the contract?

18 MR. JOHNSON: Objection to the form.

19 A Yes, it does. It's consistent with the habit I  
20 stated earlier of trying to write down my important  
21 conversations as I could as a normal part of my practice.

22 BY MR. GRIFFIN:

23 Q In your discussions with Mr. Johnson, if you  
24 recall, did he state that Vantage's position was that the  
25 Shriners were liable for all the outstanding invoices?

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1 Vantage any more, and then Vantage would do certain  
2 things to tie up loose ends here and Shriners would do  
3 certain things to tie up loose ends and then there would  
4 be some continuing obligations of Vantage here.

5 BY MR. GRIFFIN:

6 Q Do you have any idea how much profit Vantage  
7 made as a result of that agreement?

8 MR. JOHNSON: Objection to the form.

9 A No.

10 BY MR. GRIFFIN:

11 Q Did you ever try to come up with an estimate of  
12 that amount?

13 A Yes.

14 Q What was your estimate?

15 MR. JOHNSON: Objection to the form.

16 A I had four board members that the estimate was  
17 approximately 50 percent of Vantage's gross payments  
18 received from us.

19 Q So 50 percent of the 43 million dollar figure?

20 A That's correct.

21 Q Do you know how the board members calculated  
22 that amount?

23 A Board members --

24 MR. JOHNSON: Objection to the form.

25 A Sorry. No board member calculated that. I

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1 MR. JOHNSON: Objection to the form.

2 A Yes.

3 BY MR. GRIFFIN:

4 Q I have marked a December 4, 2003, letter from  
5 Laurence Johnson. It's a duplicate, I believe. Bates  
6 Number SHC01893 to 01900. Do you recognize this  
7 document?

8 A Yes, I do.

9 Q Were you involved -- strike that. Can you tell  
10 me what this document is?

11 A This document was the embodiment in writing of  
12 how we were going to exit our relationship with Vantage  
13 and who would do what and who would pay what.

14 Q Were you involved in the negotiation of this  
15 agreement?

16 A Yes, I was.

17 Q Can you tell me, in substance, what the final  
18 agreed payment was to Vantage?

19 MR. JOHNSON: Objection to the form.

20 A Basically we were going to pay the outstanding  
21 bills plus another small amount to get the final program  
22 donor list that was generated, and we were going to back  
23 out the \$223,000 additional postage that I mentioned  
24 previously.

25 And then once we paid that we wouldn't owe

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1 obtained a copy of Henry Lewis' deposition in the suit  
2 that the federal government had filed on Vantage. In his  
3 deposition I believe there is a statement that they made  
4 about 50 cents on every dollar they received. So it was  
5 just a scientific guess. I don't have any proof or  
6 anything or knowledge.

7 BY MR. GRIFFIN:

8 Q At any time subsequent to signing the agreement  
9 with Vantage --

10 A Which agreement?

11 Q The June 1999 fundraising agreement, Exhibit 2.

12 A All right.

13 Q Did Vantage ever ask that the provisions of  
14 Paragraph 13.2 be amended?

15 A Yes, I believe so.

16 Q What are the circumstances surrounding that?

17 A We were coming to the end of the contract and  
18 Vantage told me and they told a number of our officers  
19 who subsequently related to me they wanted to keep  
20 Shriners' business and keep the relationship with  
21 Shriners.

22 And there were -- there was presented by the  
23 Vantage businesspeople to our officers, and including  
24 myself, various proposals that if we entered into these  
25 proposals that the seven million and change would in some

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1 form or some degree be reduced.  
2 Q Did you ever execute any further agreements  
3 with Vantage beyond the June 1999 agreement?  
4 A If you call that an agreement, yes.  
5 Q Any fundraising agreements. I'm sorry.  
6 A Okay. Fundraising agreements? No, sir.  
7 Q Just switching gears now. How do you  
8 characterize the quality of the services that Vantage  
9 provided under the agreement?  
10 MR. JOHNSON: Objection to the form.  
11 A I really had no basis to compare the quality of  
12 the services by Vantage against any other institution  
13 that performed the same services because this was a first  
14 time that the Shriners Hospitals had ever done this. So  
15 really I had no baseline.  
16 BY MR. GRIFFIN:  
17 Q Were there ever any issues in your mind with  
18 Vantage not complying with the provisions of the  
19 agreement?  
20 MR. JOHNSON: Objection to the form.  
21 A Yes. On many, many occasions there were times  
22 that I felt and other folks in the organization felt that  
23 Vantage was going outside of the agreement or not living  
24 up to the agreement. And it became a very high  
25 visibility topic of discussion amongst the various board

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1 members and involved the board itself and myself, such  
2 that it got to the point that before we would allow  
3 Vantage to make any particular mailing that I had to  
4 approve the mailing, Bill Fossett had to approve the  
5 mailing and a third person, who is deceased now, Paul  
6 Gramlin, had to approve the mailing.  
7 And my job was to make sure that each of the  
8 mailings from an administrative point of view was  
9 consistent with the contract.  
10 BY MR. GRIFFIN:  
11 Q That's provided for in the original agreement,  
12 Exhibit 2, correct?  
13 MR. JOHNSON: Objection.  
14 BY MR. GRIFFIN:  
15 Q That there be approval of the mailings by  
16 Shriners?  
17 MR. JOHNSON: Objection, form.  
18 A Repeat that.  
19 BY MR. GRIFFIN:  
20 Q It's provided for in the original agreement  
21 that any mailings were subject to the approval of the  
22 Shriners, correct?  
23 MR. JOHNSON: Objection to the form.  
24 A That's correct.  
25 BY MR. GRIFFIN:

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1 Q And is it your testimony that Vantage did not  
2 always follow that provision of the contract?  
3 MR. JOHNSON: Objection to the form.  
4 A That's correct.  
5 BY MR. GRIFFIN:  
6 Q Did Vantage -- so Vantage did, in fact, send  
7 out mailings that were not approved by the Shriners?  
8 MR. JOHNSON: Objection to the form.  
9 A That's correct.  
10 BY MR. GRIFFIN:  
11 Q Is that what you mean when you said they were  
12 doing things outside of the agreement? Is that what you  
13 were referring to?  
14 A Outside of the agreement, I'm referring to  
15 mailings that were not in what's known as a pro forma and  
16 was attached to the original agreement or subsequent  
17 variation of the pro forma and other agreements that we  
18 had with Vantage and mailings. And there were one or two  
19 instances where we just found out flat-out that they had  
20 mailed things out without our specific approval.  
21 Q You also used the phrase "not living up to the  
22 agreement." Would that refer to the same behavior or is  
23 there anything else you were thinking of?  
24 MR. JOHNSON: Objection to the form.  
25 A That's basically what I was speaking of.

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1 BY MR. GRIFFIN:  
2 Q Did you ever come to any conclusion as to the  
3 number of mailings that Vantage made that weren't  
4 authorized by the Shriners?  
5 MR. JOHNSON: Objection to the form.  
6 A A few. Somewhere between one and three.  
7 BY MR. GRIFFIN:  
8 Q One and three total mailings that weren't  
9 authorized?  
10 A Yes.  
11 Q How many pieces of mail do those involve?  
12 A I don't recall. There were many, many, many  
13 thousands of mailings -- pieces of mail.  
14 Q Let's mark this as the next exhibit. What is  
15 marked next is an August 9, 2001, letter to Henry Lewis,  
16 president of Vantage Group Services from Kenneth Smith.  
17 Bates Number Vantage 5000 to Vantage 50001. Had you seen  
18 this document before?  
19 A Yes, I have.  
20 Q It reads in the first sentence "After  
21 considerable deliberation with the officers and directors  
22 of Shriners Hospitals for Children, I'm informing you  
23 that we believe it is no longer in the best interest of  
24 our philanthropy or Vantage Group Services, Inc., for  
25 Mr. Lawrence C. Lyon to be associated with our current

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1 Shriners Hospitals account." Is that a correct reading  
2 of that?

3 MR. JOHNSON: Objection to the form.

4 A Yes.

5 BY MR. GRIFFIN:

6 Q Do you know what the circumstances were behind  
7 this letter?

8 A Yes, I do.

9 Q Can you tell me?

10 MR. JOHNSON: Objection to the form.

11 A Ken Smith -- Kenneth W. Smith at the time was  
12 the chairman of the board of directors and also by virtue  
13 of that office the highest ranking officer of our  
14 fraternity. It was what's known as his year, and each  
15 member comes up for a one-year term.

16 Shortly prior to this resolution attached to  
17 the letter being adopted, that is what's known as the  
18 Imperial session in July of 2001, there had been many,  
19 many disagreements with Lawrence Lyon concerning the  
20 operation of the program and, in particular, Mr. Lyon's  
21 methods of operating in soliciting board members.

22 Mr. Lyon -- I had seen him at just about all of  
23 our board meetings from the time this contract began,  
24 whether to sit outside of our -- immediately outside of  
25 our boardroom and as soon as the board meeting had ceased

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1 be run through that fundraising committee, and there were  
2 folks on the boards who believed that Mr. Lyon was trying  
3 to make other proposals or proposals concerning the  
4 program to board members outside of those on this  
5 particular committee, and that's why this resolution was  
6 adopted.

7 MR. GRIFFIN: All right. I guess instead of  
8 marking a new document, we'll stop there. We've  
9 agreed to suspend.

10 (Deposition concluded at 4:12 p.m.)

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1 or had a break, he would come out and start butting the  
2 horn of various officers.

3 Some folks didn't like that. Some folks didn't  
4 like the way that he operated. They just became fed up  
5 with him as the representative. And consequently at that  
6 July session at our fundraising evaluation committee,  
7 which is the committee that had jurisdiction over  
8 evaluating this program, deposited this resolution, it  
9 was adopted and the letter was then sent to Henry Lewis  
10 by Mr. Smith.

11 BY MR. GRIFFIN:

12 Q Aside from him being present outside the board  
13 meetings, is there anything else about his methods of  
14 operating, to borrow your phrase, that the board had  
15 issues with or anybody at Shriners had issues with?

16 MR. JOHNSON: Objection to the form.

17 THE DEPONENT: Can I go off the record and I  
18 talk to him?

19 MR. GRIFFIN: Sure. Yeah.

20 (Discussion off the record.)

21 A The other one we had, as this resolution  
22 states, a fundraising evaluation committee which  
23 evaluates all fundraising efforts by folks other than  
24 Shriners, you know, individual volunteers and all  
25 proposals under our operating procedures, are supposed to

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# 1 CERTIFICATE OF OATH

2  
3 STATE OF FLORIDA  
4 COUNTY OF HILLSBOROUGH

5  
6 I, the undersigned authority, certify that  
7 JAY FLEISHER, ESQUIRE, personally appeared before me and  
8 was duly sworn.

9  
10  
11 WITNESS my hand and official seal this date:  
12 11/01/2005.

13  
14  
15  
16  
17  
18  
19  
20  
21 SHELLY NORIEGA, RPR  
22 Notary Public  
23 State of Florida  
24  
25

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## 1 CERTIFICATE OF REPORTER

2  
3 STATE OF FLORIDA  
4 COUNTY OF HILLSBOROUGH

5  
6 I, SHELLY NORIEGA, Registered Professional  
7 Reporter, certify that I was authorized to and did  
8 stenographically report the foregoing deposition; that a  
9 review of the transcript was requested; and that the  
10 transcript is a true record of the testimony given by the  
11 witness.

12  
13 I further certify that I am not a relative,  
14 employee, attorney, or counsel of any of the parties, nor  
15 am I a relative or employee of any of the parties'  
16 attorney or counsel connected with the action, nor am I  
17 financially interested in the action.

18  
19 Dated: 11/01/2005.

20  
21  
22  
23  
24 SHELLY NORIEGA, RPR  
25

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1 JONES REPORTING COMPANY  
2 (617)451-8900  
3

## 4 LETTER TO DEPONENT

5 11/01/2005  
6 JAY FLEISHER, ESQUIRE  
7 Shriners Hospitals for Children  
8 2900 Rocky Point Drive  
9 Tampa, Florida 33607

10 Re: VANTAGE FINANCIAL SERVICES, INC. Vs NONPROFIT  
11 SERVICE GROUP and GEORGE MILLER  
12 Dear Mr. Fleisher:

13 The transcript of your deposition taken in the  
14 above-styled case is now ready for signature via this  
15 courtesy copy. Please read the deposition, note any  
16 amendments or corrections on the errata sheet, and the  
17 reason therefor, and sign it. Once completed, Mr. Canter  
18 will forward your errata sheet to all counsel.

19 The Rules of Civil Procedure provide 30 days from receipt  
20 of this letter for you to exercise your right to read and  
21 sign. Failure to do so will constitute waiver of your  
22 right to read and sign.  
23 Our office is open Monday through Friday, 8:30 a.m. to  
24 5:30 p.m. If you have any questions, please don't  
25 hesitate to call us. Thank you for your attention to  
this matter.

20 Sincerely,

21 Shelly Noriega, RPR  
22 Notary Public, State of Florida

23 cc: L. Johnson, Esq.; M. Griffin, Esq.  
24  
25

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1 ERRATA SHEET  
2 TO BE ATTACHED TO DEPOSITION OF JAY FLEISHER, ESQUIRE  
3 TAKEN 10/28/05  
4 IN THE CASE OF VANTAGE VS. NSG,  
5 CASE NO.: 04-11686-WGY

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